

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

TWANIKA CARTER,
TWANIKACARTER@YAHOO.COM;

Plaintiff,

v.

TERRY SCHOONOVER, ROBERT
MURPHY, DETECTIVE AT KCPD;
JAELOON REEVES, JAMES GREEN,
SERGEANT AT KCPD; AND MISSOURI
LOTTERY,

Defendants.

Case No. 4:21-cv-00688-RK

ORDER

On March 24, 2022, the Court dismissed Plaintiff's civil action without prejudice for failure to timely and properly serve the remaining defendants. (Doc. 67.) Now before the Court is what the Court construes as Plaintiff's pro se motion for reconsideration. (Doc. 73.)

The Federal Rules of Civil Procedure do not expressly contemplate a "motion to reconsider." *Discount Tobacco Warehouse, Inc. v. Briggs Tobacco & Specialty Co., Inc.*, No. 3:09-CV-05078-DGK, 2010 WL 3522476, at *1 (W.D. Mo. Sept. 2, 2010) (citation omitted). Federal courts generally construe such a motion under either Federal Rules of Civil Procedure 59(e) or 60(b). *Sanders v. Clemco Indus.*, 862 F.2d 161, 168 (8th Cir. 1988). The Eighth Circuit has recognized whether under Rule 59(e)¹ or Rule 60(b),² a motion to reconsider is "analyzed identically." *United States v. Metro. St. Louis Sewer Dist.*, 440 F.3d 930, 933 n.3 (8th Cir. 2006). Whether to grant relief under either Rule 59(e) or Rule 60(b) rests in the discretion of the district court. *Id.* at 933 & 935. Neither, however, is an avenue to merely re-assert arguments or raise issues of law that were previously asserted before the district court. *See id.* at 933 ("Rule 59(e)

¹ Rule 59(e) states: "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."

² Rule 60(b) states: "On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . ; (3) fraud[,] . . . misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged . . . ; or (6) any other reason that justifies relief."

motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence . . . [and] cannot be used to introduce new evidence . . . or raise arguments which could have been offered or raised prior to entry of judgment”) (cleaned up); *Broadway v. Norris*, 193 F.3d 987, 989-90 (8th Cir. 1999) (holding district court did not abuse its discretion in rejecting Rule 60(b) motion that “did nothing more than reargue . . . the merits of their claim”).

In her motion, Plaintiff does not raise a proper ground for relief under either Rule 59(e) or Rule 60(b). Instead, it appears she only seeks to challenge the Court’s prior order finding deficiencies under Rule 4 of the Federal Rules of Civil Procedure. Plaintiff does not explain or present any manifest error of law or fact or any proper basis for relief under Rules 59(e) or 60(b). The Court explained the deficiencies regarding service of process under Rule 4 in both the initial order to show cause (Doc. 60) and the order of dismissal (Doc. 67).³ Plaintiff’s pro se motion for reconsideration (Doc. 73) is **DENIED**.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: March 31, 2022

³ The Court also notes Plaintiff had ample time to respond to the order to show cause. The Clerk’s office mailed the order to Plaintiff on March 11, 2022, and Plaintiff’s show cause response was not due until March 18, 2022. Moreover, the Court ultimately granted what it construed as Plaintiff’s motion for leave to file her show cause response out of time, and thus duly considered Plaintiff’s show cause response that she filed with the Court on March 21, 2022, prior to entering the order of dismissal without prejudice. (See Docs. 62, 63, 67.)